Ho Chee Meng brought them to his house in a lorry about 4.30 or 5 p.m. on 23-12-46. No. 1 paid Ho Chee Meng (whom he did not know) $3,500 in cash and also 2 cheques and 2 Bankers Drafts. He could not store all the cigarettes and No. 2 took away what he could not store in a lorry.

At the transaction, besides Ho Chee Meng and the two accused, a broker named Lau Chiang Teo was present. No. 1 stated that Ho Chee Meng gave him a receipt but that he lost it while detained at the Police Station. He also had lost a small book containing other details concerning this transaction. He stated that he told the Police the above story in their investigation and that he and the Police stopped the cheques, but that both drafts had been cashed. No. 1's explanation of keeping the cigarettes in the roof was that they might have got wet on the ground floor and also that his labourers occupy the ground floor and sleep there.

The broker Lau Chiang Teo gave evidence of introducing No. 2 to a man whose name he did not know but had been brought to him by one Teo Chik Phang who *was* known to him.

Dealing with the case against No. 1, Mr. Braga referred me to *Munusamy*[1] and *Queen — Empress v. Dhanjibhai*[2] but these cases only decide that it is for the Court to be satisfied that the circumstances were such that the police officer had grounds for suspicion that the property in the accused's possession was stolen property and that such suspicion was reasonable.

I am of opinion that in the present case the Police had in all the circumstances ample grounds for suspicion.

The only remaining question is as to whether he failed to account satisfactorily how he came by the cigarettes.

The learned District Judge found that he did so fail and I see no reason to differ from him. Mr. Braga submitted that the transaction does not on the face of it appear suspicious, but I am unable to agree with him. No. 1 was not a cigarette dealer and the transaction was a big one if undertaken, as No. 1 said, only because he had seen an announcement in a newspaper. Ho Chee Meng's statement that he lived somewhere near Benut and was a cigarette agent was accepted without confirmation and no enquiries were made about Tan Peck Sai, in whose favour the cheques and bank drafts were made. Also the cigarettes were stored in the roof of No. 1's house — a somewhat unusual spot. No. 1's appeal is, therefore, dismissed and the conviction and sentence upheld.

As against No. 2 the learned District Judge found that No. 2 knew and had reason to believe that the cigarettes were stolen property.

No. 2 gave evidence that the broker Lau Chiang Teo stopped him one day and asked him if he wanted to buy cigarettes — over $10,000 worth. That alone was an unusual proposition, but No. 2 seems to have entered almost eagerly into the transaction though he did not know the sellers. Only later did he come to know that the seller was Ho Chee Meng who said he was a dealer from up-country. No. 2 does not seem to have made any further enquiries about the seller, though Teo Chik Phang who introduced the seller or his agent to the broker Lau Chiang Teo was known to the latter. No. 2 then stated that he left the matter of the bargaining to No. 1 and just deposited his share of the transaction with him. No. 2 stated further that No. 1 told him to find space for storing some of the cigarettes and he said that he went to the houses of P. W. 8 and P. W. 9 and left them there. From the evidence of P. W. 8, No. 2 took cigarettes to his house on the morning of 24-12-46, but P. W. 9 said he took cigarettes to him on the evening of 23-12-46.

The learned District Judge stated that he was satisfied that the cigarettes found in the houses of P. W. 8 and P. W. 9 were part of the stolen cigarettes and that No. 2 knew or had reason to believe that they were stolen property.

Although there was in the case of No. 2 the added suspicion arising from the packing cases that had contained the stolen cigarettes being found within less than one mile from where P. W. 8 and P. W. 9 lived, I am of opinion that a case under section 411 of the Penal Code has not been made out against No. 2 and that his case in essentials does not differ from that of No. 1.

Accordingly I set aside the conviction and sentence under section 411 against No. 2 and convict him under section 2 (i) of Enactment 34 and sentence him to 3 months R.I. under that section.

Order Accordingly.

WONG MOOK v. WONG YIN AND 3 OTHERS.

[App. Civil Juris. (Willan, C.J.) October 15, 1947]

Labour Code S. 53 — Labourer absenting himself from work for the purpose of a strike — Whether this constitutes a breach of his agreement — Trade Unions Enactment, 1940, Ss. 20 and 54.

In this case the four respondents were employed by the appellant as tappers on a rubber estate. On the 11th day of July 1947 the respondents, along with other tappers, went on strike for a period of three days in

protest against a cut which had been made generally in the wages of rubber tappers. On the 12th day of July 1947, the appellant ordered the respondents to return to work, but they ignored that order and did not report back for work until the 14th day of July 1947 — that is, after they had been absent from work continuously for three days. When they reported back for work they found that the appellant had engaged other labourers to do the work which they had done previously, and therefore he did not wish to re-employ them. On learning this the respondents made a complaint to the Deputy Commissioner of Labour, Selangor, and claimed against the appellant one month's wages in lieu of notice, on the ground that they had been dismissed without notice. The Deputy Commissioner of Labour gave judgment in favour of the respondents and the appellant then appealed.

Held, (1) the fact that the respondents had of their own volition absented themselves for the purpose of a strike cannot be held to be a reasonable excuse for their being absent from work without leave; (2) that by absenting themselves from work for three days continuously the respondents had broken their agreements, by virtue of S. 53 (iv) (a) of the Labour Code and they were therefore in this case not dismissed by the appellant.

CIVIL APPEAL.

F. G. Charlesworth for the Appellant.

Respondents Nos. 1, 3 and 4 in person.

Respondent No. 2 absent.

Willan, C. J. : — In this case the four complainants-respondents were employed by the defendant-appellant as tappers on a rubber estate.

The second complainant-respondent was absent at the hearing of this appeal, not having been served with the notice of hearing. Therefore this judgment relates solely to the first, third and fourth complainants-respondents, and that term is used throughout this judgment as only referring to those three complainants-respondents.

On the 11th day of July, 1947, the complainants-respondents, along with other tappers, went on strike for a period of three days in protest against a cut which had been made generally in the wages of rubber tappers.

On the 12th day of July, 1947, the defendant-appellant ordered the complainants-respondents to return to work, but they ignored that order and did not report back for work until the 14th day of July, 1947 — that is after they had been absent from work continuously for three days. When they reported back for work they found that the defendent-appellant had engaged other labourers to do the work which they had done previously, and therefore he did not wish to re-employ them. On learning this the complainants-respondents made a complaint to the Deputy Commissioner of Labour, Selangor, and claimed against the defendant-appellant one month's wages in lieu of notice, on the ground that they had been dismissed without notice.

The Deputy Commissioner of Labour gave judgment in their favour on the following grounds :—

(1) That since the strike was not an illegal strike as defined in the Imperial Trade Disputes and Trade Union Act, 1927, the complainants-respondents were entitled to strike and therefore they had not broken their agreements with defendant-appellant.

(2) That since the complainants-respondents had announced their intention of striking and given notice to that effect through a Trade Union representative, they were entitled to be absent from duty for the period they had stipulated — in this case three days.

(3) That the action of the defendant-appellant in ordering the complainants-respondents to return to work the day after they went on strike was an order designed to prevent the complainants-respondents from doing what they were entitled to do — i.e. to go on strike.

(4) That since the complainants-respondents had returned to work on the day immediately following the three days' strike they had not broken their agreements with the defendant-appellant. That since the defendant-appellant had "failed to re-employ" — (the words in inverted commas are the actual words used by the Deputy Commissioner of Labour in his judgment) — the complainants-respondents, he, the defendant-appellant, had broken his agreements with the complainants-respondents and was therefore liable to pay to each one of them one month's wages in lieu of notice.

The decision of the Deputy Commissioner of Labour is wrong, and the reason why he has come to that fallacious decision is, that instead of applying the provisions of the local law laid down in the Federated Malay States Labour Code (Cap. 154), which is the law governing the agreements between the complainants-respondents and the defendant-appellant, he has concentrated his attention on the provisions of the English Act relating to Trade Unions and Trade Disputes. On that he came to the conclusion that, because the strike in which the complainants-respondents took part was not an illegal strike as defined in that Act, they had not broken their agreements with the defendant-appellant by remaining away from work for three days continuously.

It would have been more appropriate if the Deputy Commissioner of Labour had referred to the local law relating to trade unions, which is contained in the Trade Unions Enactment, 1940 (of the Federated Malay States) instead of referring to an English Act which has no application here. If he had done so, he would have found guidance from sections 20 and 54 (2) thereof.

Section 20 is as follows :—

> "No suit or other legal proceeding shall be maintainable in any civil Court against any registered trade union or any officer or member thereof in respect of any act done in

contemplation or in furtherance of a trade dispute to which a member of the trade union is a party *on the ground only that such act induces some other person to break a contract of employment,* or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills".

The words underlined contemplate that a person going on strike, even though the strike is not an illegal one, may break his contract of employment.

Section 54 (2) is as follows :—

"This Enactment shall not affect —

. . . . . .

(2) Any agreement between an employer and those employed by him as to such employment;

. . . . . ."

This clearly lays down that the provisions of the local law relating to trade unions do not affect the agreements between the complainants-respondents and the defendant-appellant in this case. Accordingly it is to the Labour Code that one must look to see what is the law regarding the breaking of such agreements. The relevant portion is contained in sub-sections (iii) and (iv) of section 53 of that Code. They are as follows :—

(iii) In the case of a labourer employed on agreement for a period of one month and paid according to the number of days' work performed in such month an employer shall be bound to provide work suitable to his capacity for twenty-four days in every calendar month, with the exception of authorised holidays and if he is unable or fails to provide such work on such number of days in each calendar month (except as aforesaid) whereon the labourer presents himself for work and is fit to work the employer shall nevertheless be bound to pay to the labourer in respect of each of such days wages at the same rate as if such labourer had performed a day's work, provided that any dispute between a labourer and his employer as to whether such labourer was fit to work may be referred to the Controller whose decision shall be final.

(iv) An agreement shall be deemed to be broken :—

(a) By the labourer if he is continuously absent from work for more than one day, exclusive of any day on which the employer is not bound under sub-section (iii) to provide work, without leave from the employer or without reasonable excuse;

(b) By the employer if he fails to provide work or pay wages as provided in sub-section (iii).

In this case the complainants-respondents absented themselves from work continuously for three days without leave from the defendant-appellant. The fact that of their own volition they absented themselves for the purpose of a strike cannot be held to come within the words "reasonable excuse", otherwise it would mean that labourers could absent themselves from work for however long a strike remained in progress and claim that they had not broken their agreements. Illness, or where labourers depend on transport to take them to their place of work and such transport breaks down, are ready examples of what would be regarded as a reasonable excuse for being absent from work.

Therefore by absenting themselves from work for three days continuously the complainants-respondents, by paragraph (a) of sub-section (iv) set out above, have broken their agreements with the defendant-appellant, and they were not, as found by the Deputy Commissioner of Labour, dismissed by him.

Accordingly, the judgment of the Deputy Commissioner of Labour is set aside as regards complainants-respondents 1, 3 and 4. The defendant-appellant, who was represented by Mr. Charlesworth, did not ask for costs and therefore there is no order as to costs of this appeal.

The appeal involving the second complainant-respondent is adjourned. Meanwhile no execution is to issue on the judgment awarded in her favour by the Deputy Commissioner of Labour.

Appeal Allowed.

RAMAMOORTHY v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Malayan Union, Murray Aynsley, C.J., Singapore and Bostock Hill, J.) October 15, 1947]

Penal Code, S. 193 — Giving false evidence — Alternative Charges based on contradiction between statement made in course of police investigation and